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10/526,253

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EXAMINER

DONDERO, WILLIAM E

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|---------------------------------------|--|--|
| Office Action Summary | Application No. 10/526,253 | Applicant(s) MOGENSEN ET AL. | |
| | Examiner WILLIAM E. DONDERO | Art Unit 3654 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14 and 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first portion and second portion of the tube being arranged in the at least one slot at the same time (Claim 15) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities: referring to the claims in the specification is improper and should be deleted (see page 6, lines 20 and 25; page 7, lines 2, 7, 11, 16, and 31; and page 8, line 1).

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Burger et al. (US-4802638). Regarding Claim 1, Burger et al. disclose an apparatus capable of adjustment of the length of an infusion tube comprising a first wall 110; a second wall 120; at least one slot 160 arranged in at least one of the walls such that an infusion tube can pass through the wall; the at least one slot extending from a periphery of the wall radially towards a center of the wall; at least one connecting element 100 connecting the first wall to the second wall; the connecting element being secured at a distance to a peripheral circumference of the walls; and an inlet opening (defined by line CC' in Figure 6) extending around the connecting element, the opening being provided by a distance between the walls in a radial distance to the connecting element, inner faces of the first and second walls converge from the connecting element towards the inlet opening, the opening having a width measured between the walls, the width sized

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to be capable of allowing passage of a single infusion tube through the opening (Figures 1-12). Regarding Claim 2, Burger et al. disclose the first and second walls are identically configured bodies arranged in parallel and opposite to each other (Figures 1-12). Regarding Claim 3, Burger et al. disclose that the connecting element comprises a cylindrical unit, the longitudinal axis of which is located perpendicular to the inner faces of the first and second walls (Figures 1-12). Regarding Claims 4-5, Burger et al. disclose the entire apparatus, including the walls are, at least in the area delimiting the inlet opening, manufactured from an elastic material (See Figures 5-6; Column 3, Lines 20-63). Regarding Claims 6-8, Burger et al. disclose an attachment device, a clip device 200, integrated with the first or second wall for mounting the apparatus on a carrier face, and at least one slot 180 is formed in the wall in which the attachment device for mounting the apparatus on a carrier face is arranged (Figure 12). Regarding Claim 14, Burger et al. disclose the inlet opening is funnel-shaped (see Figure 8) such that the walls diverge away from the inlet opening toward the connecting element (Figures 1-12).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burger et al. (US-4802638). Regarding Claim 15, Burger et al. discloses a first portion of the

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elongate material attached to end 70 and a second portion of the elongate material attached to 80 (Figures 1-12). Burger et al. is silent about the first portion and second portion being arranged in the at least one slot at the same time. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to have both portions in the slot at the same time to provide easy and quick access to both ends.

Claims 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burger et al. (US-4802638) in view of Shober, Jr. et al. (US-5265822). Burger et al. disclose a method of adjusting the length of an elongate material using an apparatus according to claim 1, as advanced above, comprising inserting the elongate material through an inlet opening (defined by line CC' in Figure 6), such that a first portion and a second portion of the elongate material positioned outside the apparatus and a third portion is positioned between the walls; winding at least a portion of the second portion of the elongate material around a connecting element 100; and securing first and second end portions of the elongate material in at least one slot 160 or the inlet opening (Figures 1-12). Burger et al. further disclose securing the first portion of the elongate material in the at least one slot, the at least one slot extending from the peripheral circumference of the one wall and towards the center of the wall (Figures 1-12). Burger et al. additionally disclose securing a free elongate material portion at the delimitation of the inlet opening provided at the walls (Figures 1-2; Column 3, Lines 20-63). Burger et al. also disclose securing the second elongate material portion in the at least one slot, the at least one slot extending from the one peripheral circumference of the one wall and towards the internal area of the wall (Figures 1-12). Burger et al. is silent about the

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elongate material being an infusion tube. However, Shober, Jr. et al. disclose a reel 10 for an infusion tube 30 (Figures 1-8). Because both Burger et al. and Shober, Jr. et al. teach a reel for an elongate material, it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the infusion tube of Shober, Jr. et al. for the elongate material of Burger et al. to achieve the predictable result of storing and dispensing the infusion tube as taught by Shober, Jr. et al.

Response to Arguments

With respect to Applicant's arguments starting on page 8, line 17 to page 9, line 28, Applicant argues Burger et al. does not disclose or suggest a device having at least one slot arranged in one of the walls such that an infusion tube can pass through at least one of the walls, the at least one slot extends from a periphery of the wall radially towards a center of the wall, and an inlet opening extending around the connecting element, the inlet opening having a width measured between the walls sized to allow passage of a single infusion tube. Applicant's arguments have been fully considered but they are not persuasive. As advanced above, Burger et al. does disclose a slot 160 arranged in one of the walls 120 such that an infusion tube is capable of passing through the at least one of the walls and the slot does extend from the periphery 125 of the wall radially towards a center of the wall (defined by the concave wall 127 that extends with is sloped end towards the center of wall 120). Further, as advanced above Burger et al. does disclose an inlet opening (defined by line CC' in Figure 6 or line 174 in Figure 8) extending around the connecting element and having a width measured

between the walls and sized to allow passage for any elongate material, including infusion tube.

With respect to Applicant's arguments starting on page 10, line 1 to page 12, line 2, Applicant argues there is no motivation to combine Burger et al. and Shober, Jr. Applicant's arguments have been fully considered but they are not persuasive. KSR (KSR International Co. v. Teleflex, Inc., 550 U.S. ___, 82 USPQ2d 1385 (2007)) forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness. Further one of ordinary skill in the art would recognize that one reel can be used for many types of elongate material, such as substituting using a reeling device for infusion tubing rather than wire. Further as applicant, stated in the arguments in lines 11-12 of page 11, one of ordinary skill in the art would easily recognize that some elongate materials may be different sizes and therefore opening of the devices may need to be adjusted to accommodate such material restrictions.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM E. DONDERO whose telephone number is (571)272-5590. The examiner can normally be reached on Monday through Friday 6:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/W. E. D./

Examiner, Art Unit 3654

/Peter M. Cuomo/

Supervisory Patent Examiner, Art Unit 3654